

SPECIAL CIVIL APPLICATION No 7251 of 1999

Hon'ble MR.JUSTICE M.C.PATEL Sd/-

2. To be referred to the Reporter or not? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made tJJJJJ : NO

5. Whether it is to be circulated to the Civil Judge? : NO  
Nos. 1 to 5 No

Versus

Appearance:

MRS.SD TALATI, AGP. for Respondent No. 1

Date of decision: 25/10/1999

Rule. Mrs. S.D.Talati, learned Assistant Government Pleader waives service of the Rule. By consent of the parties the matter is taken up for final hearing.

The petitioners are holding licences for eating houses issued by the Sub Divisional Magistrate, Palitana under the provisions of Bombay Police Act, 1951. According to them they have been carrying on their business on Talaja Road, Palitana for more than 35 years.

It is not in dispute that the licences have been renewed from time to time. However, the District Magistrate issued notification dated 31.8.1999 prohibiting the storage and sale of eggs, fish and meat in the area mentioned in the notification and according to the petitioners the said notification cover their shops and their rights are affected. They have therefore filed this petition under Article 226 of the Constitution challenging the legality and validity of the said notification on various grounds. It is contended that the notification has been issued without giving any opportunity of hearing to petitioner and that the notification has been issued without any authority of law.

Now the notification purports to have been issued by the District Magistrate in public interest in exercise of the powers vested in him under section 33(m) of the Bombay Police Act, 1951. Section 33(1) confers power on the District Magistrate to make alter or rescind rules or orders with respect to certain matters specified in the sub-sections which follow.

Sub-section 33(m) on which reliance has been placed reads as follows :

"(m) directing the closing or disuse, wholly or for certain purposes, or limiting to certain purposes only the use of any source, supply or receptacle of water and providing against pollution of the same or of the water therein".

It is clear that the impugned notification does not fall within the purview of the said section 33(m). The notification is therefore liable to be set aside on that ground alone and accordingly it is set aside without going into other contentions raised on behalf of the petitioner. It will be open to the authority to issue a fresh notification if there is any other provision conferring power on him to issue such notification or impose such a ban in accordance with law. Rule made absolute. No order as to costs.

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m.m.bhatt